

ESTTA Tracking number: **ESTTA88081**

Filing date: **06/30/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91163884
Party	Plaintiff O' Neil Product Development, Inc.
Correspondence Address	Bruce B. Brunda Stetina Brunda Garred & Brucker 75 Enterprise, Suite 250 Aliso Viejo, CA 92656  bbrunda@stetinalaw.com
Submission	Motion for Default Judgment
Filer's Name	Bruce B. Brunda
Filer's e-mail	opposition@stetinalaw.com
Signature	/bbb/
Date	06/30/2006
Attachments	MotionForDefault.pdf ( 35 pages )(510857 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**In Re United States Trademark Application Serial No. 78/033,719**

O'Neil Software, Inc.	)	
	)	Opposition No. 91163884
Petitioner,	)	
	)	
vs.	)	
	)	
Read & Seal, LLC	)	
	)	
Registrant.	)	
_____	)	

**MOTION FOR ENTRY OF DEFAULT JUDGMENT**  
**UNDER 37 C.F.R. §2.106(a)**

Box TTAB – NO FEE  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Opposer, O'Neil Software, Inc. hereby brings this Motion for Entry of Default Judgment. As a basis for this motion Opposer advises as follows.

- On January 3, 2005, Opposer filed its Notice of Opposition (attached hereto as Exhibit A).
- On January 24, 2005, the Trademark Trial and Appeal Board (TTAB) issued its Order instituting the proceedings and setting the dates (attached hereto as Exhibit B).

- On March 19, 2005, the TTAB re-issued its Order indicating that its original Order was inadvertently mailed to Applicant at an incorrect address (attached hereto as Exhibit C). This Order extended the deadline for Applicant to file its Answer to the Notice of Opposition an additional forty (40) days from the mailing date of the Order, i.e. until April 28, 2005.
- Applicant did not file an Answer to the Notice of Opposition on or before April 28, 2005.
- On June 17, 2005, the TTAB issued a Notice of Default for failure to file an Answer to the Notice of Opposition (attached hereto as Exhibit D).
- On August 5, 2005, the TTAB re-issued a Notice of Default after its previous notice had been returned and a phone call had been made to Applicant to obtain its correct mailing address (attached hereto as Exhibit E).
- On August 22, 2005, Applicant responded to the Notice of Default indicating that it had not received any notification that the proceedings had been instituted against it (attached hereto as Exhibit F).
- On October 21, 2005, the TTAB issued an Order setting aside an entry of default against Applicant, resetting the dates and allowing Applicant forty (40) days from the mailing date of the Order to file an Answer to the Notice of Opposition, i.e. until November 30, 2005 (attached hereto as Exhibit G).

As of the filing date of this Motion for Entry of Default Judgment, no Answer has been filed by Applicant. Therefore, in view of the forgoing, an Entry of Default in this matter is proper.

///

///

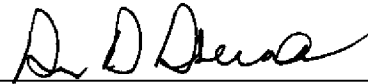
This Motion is filed herewith in triplicate and a Proof of Service to Applicant is attached hereto. Should any additional fees be necessary, please charge Deposit Account No. 19-4330.

Respectfully submitted,

STETINA BRUNDA GARRED & BRUCKER

Dated: June 29, 2006

By:



Bruce B. Brunda, Reg. No. 28,497  
75 Enterprise, Suite 250  
Aliso Viejo, CA 92656  
(949) 855-1246 (Tel)  
(949) 855-6371 (Fax)  
Counsel for Opposer  
O'Neil Software, Inc.

Customer No. 007663

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# EXHIBIT A

LAW OFFICES  
**Stetina Brunda Garred & Brucker**  
A PROFESSIONAL CORPORATION  
PATENT, TRADEMARK, COPYRIGHT AND UNFAIR COMPETITION CAUSES  
75 ENTERPRISE, SUITE 250  
ALISO VIEJO, CALIFORNIA 92656

**TTAB**

KIT M. STETINA  
BRUCE B. BRUNDA  
WILLIAM J. BRUCKER  
MARK B. GARRED  
MATTHEW A. NEWBOLES  
ERIC L. JANEZAKI  
LOWELL ANDERSON

SEAN O'NEILL  
BRENT A. FOLSOM  
MICHAEL D. NORNBERG \*  
JAMES C. YANG

JESSIE WANG †  
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Writer's Direct E-mail:  
bbrunda@stetinalaw.com

January 3, 2005

Box TTAB - Fee  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

RE: O'Neil Software, Inc. v. Read & Seal, LLC  
Serial No.: 78/033,719  
Our Reference: ONELL-012M  
For the Mark: RSWEB

Dear Sir/Madam:

Enclosed for filing are the following:

1. Notice of Opposition with Exhibit 1-2 (in triplicate);
2. Transmittal (in triplicate);
3. Check for \$300 for Filing Fees;
4. Certificate of Mailing; and
5. Return Postcard.

Please charge any additional cost to our Deposit Account Number 19-4330. This letter is enclosed herewith in triplicate.

Respectfully submitted,

STETINA BRUNDA GARRED & BRUCKER

By: 

Bruce B. Brunda, Reg. No. 28,497  
75 Enterprise, Suite 250  
Aliso Viejo, CA 92656  
(949)855-1246  
Counsel for Opposer

Customer No.: 007663



01-06-2005

U.S. Patent & TMO/TM Mail Rpt Dt. #77

Case: ONELL-012M  
Trademark Application

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**  
**IN RE SERIAL NO. 78/033,719**

O'NEIL SOFTWARE, INC.	)	Opposition No.:
	)	
Opposer,	)	
	)	
vs.	)	
	)	
READ & SEAL, LLC	)	
	)	
Applicant.	)	
	)	

**NOTICE OF OPPOSITION**

Box TTAB - Fee  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

Dear Sir or Madam:

In the matter of the application of Read & Seal, LLC of Irvine, California (hereinafter "Applicant") for registration of the trademark RSWEB, Applicant Application Serial No. 78/033,719, published in the Official Gazette of November 30, 2004, at TM 160, O'Neil Software, Inc., a California corporation, with offices at 11 Cushing, Irvine, California 92618 (hereinafter "Opposer"), believes that it will be

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damaged by registration of the mark shown in Serial No. 78/033,719, and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer is and has been for many years engaged in the extensive design, development, advertising, marketing and commercialization of a variety of products, including software record management, namely, interfacing record management software to the World Wide Web. In connection therewith, Applicant has not yet disclosed or indicted the dates of first use for the mark at issue. Opposer has used in interstate commerce, the mark RS WEB (hereinafter referred to as the RS WEB Trademark) for the aforementioned goods for many years.

2. Since at least as early as April 2000, Opposer has made use of its RS WEB Trademark throughout the United States in interstate commerce. Opposer has registered RS WEB trademark on October 7, 2003, Registration No. 2,772,104 for software record management, namely, interfacing record management software to the World Wide Web. (copy attached as **Exhibit 1**)

3. Opposer has expended considerable sums in exerting every effort to maintain the highest standard of quality for its products, and has created valuable goodwill among the purchasing public under its RS WEB Trademark.

4. As a result of the continuous and extensive use of the RS WEB Trademark by Opposer, that mark has become and continues to function as a valuable business and marketing asset of Opposer, and serves to indicate to the trade and consuming public the products originating from Opposer and its authorized representatives.



5. Notwithstanding Opposer's rights in and to said RS WEB Trademark, Applicant, on information and belief, filed an application for registration of RSWEB, in International Class 009 on November 3, 2000 for computer software for web site development that enables the user to automatically retrieve web content from a predetermined set of urls (source content) and to automatically incorporate that source content into a new web site (target content) which is automated through the use of a predetermined set of rules to define the modification from source content to the target content for use in electronic commerce that may be downloaded from a global computer network. Said application was published for opposition in the Official Gazette of November 30, 2004 at TM 160.

6. Pursuant to Trademark Rules of Practice 2.102, Opposer filed a Request to Extend Time for Filing this Notice of Opposition to January 29, 2005. A copy of said Request to Extend Time is attached hereto as **Exhibit 2**.

7. Applicant's RSWEB, mark is confusingly similar to Opposer's RS WEB Trademark and its registration and use by Applicant on the goods claimed in the subject application is likely to cause confusion, deception and mistake.

8. Applicant's use of the mark RSWEB, interferes with Opposer's use of its RS WEB Trademark and use of, or registration of, the mark RSWEB, by Applicant will seriously damage Opposer.

WHEREFORE, Opposer believes that it will be damaged by said registration and prays that registration of the mark RSWEB, to Applicant be denied.

The filing fee for this Opposition in the amount of \$300 (one international class) is enclosed and this Opposition is enclosed herewith in triplicate.

Opposer's representative authorizes the charging of any additional fees to its Deposit Account No. 19-4330.

Respectfully submitted,

STETINA BRUNDA GARRED & BRUCKER

Dated: January 3, 2005

By: 

Bruce B. Brunda, Reg. No. 28,497  
75 Enterprise, Suite 250  
Aliso Viejo, CA 92656  
(949) 855-1246  
Counsel for Opposer

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# The United States of America



## CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

*The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.*

*The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.*

*A copy of the Mark and pertinent data from the application are part of this certificate.*

*This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.*



A handwritten signature in black ink, appearing to read "James H. Moore".

Director of the United States Patent and Trademark Office

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

**United States Patent and Trademark Office**

Reg. No. 2,772,104

Registered Oct. 7, 2003

**TRADEMARK  
PRINCIPAL REGISTER**

**RS WEB**

O'NEIL SOFTWARE, INC. (CALIFORNIA CORPORATION)  
8 MASON  
IRVINE, CA 92618

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "WEB", APART FROM THE MARK  
AS SHOWN.

FOR: SOFTWARE RECORD MANAGEMENT,  
NAMELY, INTERFACING RECORD MANAGEMENT  
SOFTWARE TO THE WORLD WIDE WEB,  
IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

SN 76-123,791, FILED 9-8-2000.

FIRST USE 2-0-2000; IN COMMERCE 4-0-2000.

ZHALEH DELANEY, EXAMINING ATTORNEY




ATTORNEY DOCKET NO: ONEIL-000  
MARK: RSWEB

**Certificate of Mailing**

☐ I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner of Trademarks  
PO Box 1451  
Alexandria, VA 22313-1451

on December 15, 2004

  
\_\_\_\_\_  
(Signature)

Stacy Wilson  
(Typed name of person signing certificate)

Note: Each paper must have its own certificate of mailing, or this certificate must identify each submitted paper.

1. Return Postcard;
2. Transmittal (in triplicate); and
3. FIRST REQUEST TO EXTEND TIME FOR FILING NOTICE OF OPPOSITION (in triplicate);
4. Certificate of Mailing.

LAW OFFICES  
**Stetina Brunda Garred & Brucker**  
A PROFESSIONAL CORPORATION  
PATENT, TRADEMARK, COPYRIGHT AND UNFAIR COMPETITION CAUSES  
75 ENTERPRISE, SUITE 250  
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SEAN O'NEILL  
BRENT A. FOLSOM  
MICHAEL D. NORNBERG \*  
JAMES C. YANG

JESSIE WANG †  
NATHAN S. SMITH †

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FACSIMILE II (949) 716-8197  
www.stetinalaw.com  
Writer's Direct E-mail:  
bbrunda@stetinalaw.com

December 15, 2004

Commissioner for Trademarks  
PO Box 1451  
Alexandria, VA 22313-1451

Re: Serial No. 78/033,719  
Mark: RSWEB  
Our Reference: ONEIL-000

Dear Sir/Madam:

Enclosed herewith for filing in the above-identified matter are the following:

1. Return Postcard;
2. Certificate of Mailing;
3. Transmittal (in triplicate); and
4. First Request for Extension of Time to Oppose (in triplicate).

Please charge any additional fees to Deposit Account No. 19-4330. This Transmittal Letter is enclosed herewith in triplicate.

Respectfully submitted,

By: 

Customer No. 007663

Attorney Bruce B. Brunda, Reg. No. 28,497  
STETINA BRUNDA GARRED & BRUCKER  
75 Enterprise, Suite 250  
Aliso Viejo, CA 92656  
(949) 855-1246

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Dear Sir:

Please date stamp and return this card,  
adding the serial number assigned where  
applicable.

(BBB/saw)

Date Mailed: December 15, 2004

Docket Number: ONEIL-000

Serial No.: 78/033,719

Filing Date: November 3, 2000

Title: RSWEB

Papers transmitted herewith:

1. Return Postcard;
2. Transmittal (in triplicate); and
3. FIRST REQUEST TO EXTEND TIME FOR  
FILING NOTICE OF OPPOSITION (in triplicate);
4. Certificate of Mailing.

Case: ONEIL-000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In Re: Read & Seal, LLC )

Serial No.: 78/033,719 )

Filed: November 3, 2000 )

For the Mark: RSWEB )

FIRST REQUEST UNDER RULE 2.102 TO EXTEND TIME  
FOR FILING NOTICE OF OPPOSITION

Commissioner for Trademarks  
PO Box 1451  
Alexandria, VA 22313-1451

Dear Sir/Madam:

In the matter of the above-identified application, which was published in the Official Gazette on November 30, 2004, at TM 160, O'Neil Product Development, Inc., through its attorneys, requests that the time for filing a Notice of Opposition to the subject application be extended for a period of thirty (30) days until January 29, 2005.

This is the first request for an extension of time. This extension is necessary to enable counsel to confer with potential Opposer to determine whether an opposition might be required.

The subject Extension of Time is not entered into for purposes of delay, and it is therefore respectfully requested that the Board grant the requested Extension of Time.

Please charge any fees which may be due in relation to this matter to Deposit Account  
Number 19-4330.

Respectfully submitted,

Date: December 15, 2004  
Customer No. 007663

By:



Bruce B. Brunda  
Registration No. 28,497  
STETINA BRUNDA GARRED & BRUCKER  
75 Enterprise, Suite 250  
Aliso Viejo, CA 92656  
(949) 855-1246

BBB/saw

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# EXHIBIT B

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Mailed: January 24, 2005

Opposition No 91163884  
Serial No. 78033719

Read & Seal. LLC  
IRVINE CENTER  
8001 IRVINE CENTER DR STE 400  
IRVINE, C 92618-2956

O' Neil Product Development, Inc.

v.

Read & Seal. LLC

Bruce B. Brunda  
Stetina Brunda Garred & Brucker  
75 Enterprise, Suite 250  
Aliso Viejo, CA 92656

**Torri Rodgers, Legal Assistant**

A notice of opposition to the registration sought in the above-identified application has been filed. A copy of the notice is attached.

**ANSWER IS DUE FORTY DAYS** after the mailing date hereof. (See Trademark Rule 2.196 for expiration date falling on Saturday, Sunday or a holiday).

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations. The parties are reminded of the recent amendments to the Trademark Rules that affect the rules of practice before the TTAB. See Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003); Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes, as well as the *Trademark Trial and Appeal Board Manual of Procedure* (TBMP), are available at [www.uspto.gov/web/offices/dcom/ttab/](http://www.uspto.gov/web/offices/dcom/ttab/).

The parties are particularly referred to Trademark Rule 2.126 pertaining to the form of submissions. Paper submissions, including but not limited to exhibits and depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.

Discovery and testimony periods are set as follows:

Discovery period to open: February 13, 2005

Discovery period to close: August 12, 2005

30-day testimony period for party  
in position of plaintiff to close: November 10, 2005

30-day testimony period for party  
in position of defendant to close: January 09, 2006

15-day rebuttal testimony period  
for plaintiff to close: February 23, 2006

A party must serve on the adverse party a copy of the transcript of any testimony taken during the party's testimony period, together with copies of documentary exhibits, within 30 days after completion of the taking of such testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

**NOTE:** The Board allows parties to utilize telephone conferences to discuss or resolve many interlocutory matters that arise in inter partes cases. See the *Official Gazette* notice titled "Permanent Expansion of Telephone Conferencing on Interlocutory Matters in Inter Partes Cases Before the Trademark Trial and Appeal Board," 1235 TMOG 68 (June 20, 2000). The notice is available at <http://www.uspto.gov>. Interlocutory matters which the Board agrees to discuss or decide by phone conference may be decided adversely to any party which fails to participate.

If the parties to this proceeding are also parties to other Board proceedings involving related marks or, during the pendency of this proceeding, they become parties to such proceedings, they should notify the Board immediately, so that the Board can consider consolidation of proceedings.

#### **New Developments at the Trademark Trial and Appeal Board**

TTAB forms for electronic filing of extensions of time to oppose, notices of opposition, and inter partes filings are now available at <http://estta.uspto.gov>. Images of TTAB proceeding files can be viewed using TTABVue at <http://ttabvue.uspto.gov>.

# EXHIBIT C

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

tnr

Mailed: March 19, 2005

Opposition No. 91163884

O' Neil Product Development,  
Inc.

v.

Read & Seal LLC

**Torri Rodgers, Legal Assistant**

The Board inadvertently forwarded the notice instituting this proceeding and a copy of the notice of opposition that was intended for applicant to an incorrect address. The error is regretted.

Accordingly, the above notice, with enclosure, is remailed to applicant at the correct address:

Read & Seal, LLP

Irvine Center

8001 Irvine Center Drive, Suite 400

Irvine, CA 92618-2956

In view of the circumstances herein, the time for filing an answer to the notice of opposition is extended to forty days from the mailing date of this order. Any



discovery requests or notices served that remain unanswered as of the mailing date of this order must be reserved in accordance with the rules, unless otherwise agreed to by the parties.

In accordance with the Trademark Rules of Practice, discovery is open, and the close of discovery and testimony dates are set as indicated below. In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Discovery period to close:	<b>October 5, 2005</b>
30-day testimony period for party in position of plaintiff to close:	<b>January 3, 2006</b>
30-day testimony period for party in position of defendant to close:	<b>March 4, 2006</b>
15-day rebuttal testimony period to close:	<b>April 18, 2006</b>

Briefs shall be filed in accordance with Trademark Rule 1.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

# EXHIBIT D

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

tdc

Mailed: June 17, 2005

Opposition No. 91163884

O' Neil Product Development,  
Inc.

v.

Read & Seal. LLC

**Tyrone Craven, Paralegal:**

Answer was due (as last reset) in this case on May 18, 2005. Inasmuch as it appears that no answer has been filed, nor has applicant filed a motion to further extend its time to answer, notice of default is hereby entered against applicant under Fed. R. Civ. P. 55(a).

Applicant is allowed until thirty days from the mailing date of this order to show cause why judgment by default should not be entered against applicant in accordance with Fed. R. Civ. P. 55(b).

# EXHIBIT E

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Tdc

Mailed: August 5, 2005

Opposition No. 91163884

O' Neil Product Development,  
Inc.

v.

Read & Seal. LLC

**Tyrone Craven, Paralegal:**

On June 17, 2005, the Board mailed a notice of default to applicant to an address that it believed to be correct. The letter was returned undeliverable by the postal service.

The office contacted applicant and was provided a current address for the applicant. Accordingly, the notice of default is being remailed as follows:

Read and Seal  
19501 Sierra Seco  
Irvine, CA 92603<sup>1</sup>

In view thereof, applicant Read and Seal. LLC is allowed until thirty days from the mailing date of this

---

<sup>1</sup> The Board is aware that applicant's copy of the notice of default was returned by the United States Postal Service as return to sender attempted not known. It is applicant's responsibility to keep this Office apprised of its current address. See TBMP §117.07. See also, Patent and Trademark Rule 2.18.

order to show cause why judgment by default should not be entered against it in accordance with Fed. R. Civ. P. 55(b).

# EXHIBIT F

## Read & Seal, LLC.

19501 Sierra Seco  
Irvine, CA 92603

August 22, 2005

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

RE: Opposition No. 91163884

Dear Tyron Crave, Paralegal:

We're in receipt of your letter dated August 5, 2005. Please be advised that this is the first and only notice that we've received regarding this "Opposition No. 91163884". Given this fact, it is quite difficult argue our defense other than the issue of mail delivery. We would like to take this opportunity to make a few points in our defense:

- First, you contacted Read Technologies via phone and received an updated phone number in response to the returned notice of default sent to Read & Seal, LLC. Read Technologies, and Read & Seal, LLC have shared the same physical offices since Read & Seal, LLC was first founded in 1999 and remained there through October 2004. We were assured by Read Technologies that we would continue to receive mail at their address, and thus we wouldn't need to file any change of address with the post office so we didn't.
- Since you were sending a notice of default, one would surmise that your office had sent other notices regarding the said opposition. We received nothing though no fault of our own.
- The address that you had on file was most likely from a patent application that was filed in the 1999-2000 time frame, which was ultimately abandoned. We're not aware of any other pending business with your office, and thus we never filed any change of address directly with you.
- Finally, we have never been contracted by O'Neil Product Development directly, and thus we have no idea who they are or what they are opposing.

Given these facts we definitely are opposed to any automatic default. This is especially true considering we're not ever sure what the matter is regarding and any ramifications this default may have upon our business.

All of the above statements are true and correct.

Sincerely,

Michael W. Read,  
President  
Read & Seal, LLC.



08-25-2005

U.S. Patent & TMO/TM Mail Rcpt Dt. #39



# EXHIBIT G

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Mailed: October 21, 2005

Opposition No. 91163884

O' Neil Product Development,  
Inc.

v.

Read & Seal. LLC

Cheryl Goodman, Interlocutory Attorney:

On August 25, 2005 applicant filed its response to the Board's notice of default.<sup>1</sup>

In support of its request to set aside default, applicant advises that it is opposed to "any automatic default" because applicant has never received any Board correspondence prior to the August 5, 2005 notice of default.<sup>2</sup>

Inasmuch as applicant has advised that it did not receive the institution order and notice of opposition as

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<sup>1</sup> Applicant's communication does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119 which requires all papers filed with the Board to be served on the opposing party. In order to expedite this matter, a copy of said communication is forwarded herewith to counsel for opposer, but strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board.

<sup>2</sup> Applicant also asserts in its letter that its "patent" application has been ultimately abandoned and that it is not aware that it has any pending business with the Office. However, the application at issue here is a trademark application for the mark RSWEB, application Serial No. 78033719. That application has not been expressly abandoned according to Office records.

originally mailed or remailed, notice of default is set aside. *Cf. Commodities Future Trading Com'n v. Wall Street Underground, Inc.*, 221 F.R.D. 554, 558 (D. Kan. 2004) (entry of default judgment must be set aside due to court's lack of personal jurisdiction over defendant because defendant never properly served with complaint). The notice of opposition is attached herein.

Applicant is allowed until FORTY DAYS from the mailing date of this order to file its answer to the notice of opposition.

Discovery and trial dates are reset as follows:

DISCOVERY PERIOD TO CLOSE: **April 20, 2005**

30-day testimony period for party in position of plaintiff to close: **July 19, 2005**

30-day testimony period for party in position of defendant to close: **September 17, 2005**

15-day rebuttal testimony period for party in position of plaintiff to close: **November 1, 2005**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

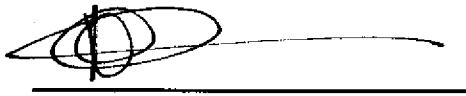
**PROOF OF SERVICE**

State of California     )  
                                      ) ss.  
County of Orange     )

I am over the age of 18 and not a party to the within action; my business address is 75 Enterprise, Suite 250, Aliso Viejo, California 92656. On **June 30, 2006**, the attached **MOTION FOR ENTRY OF DEFAULT JUDGMENT UNDER 37 C.F.R. §2.106(A)** was served on all interested parties in this action by U.S. Mail, postage prepaid, at the address as follows:

Michael W. Read  
READ & Seal, LLC  
19501 Sierra Seco  
Irvine, CA 92603

Executed on **June 30, 2006** at Aliso Viejo, California. I declare under penalty of perjury that the above is true and correct. I declare that I am employed in the office of STETINA BRUNDA GARRED & BRUCKER at whose direction service was made.

  
\_\_\_\_\_  
Kimberly Carlsen